

PART 380—ORDERLY LIQUIDATION AUTHORITY

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SOURCE: 76 FR 4215, Jan. 25, 2011, unless otherwise noted.

Subpart A—General and Miscellaneous Provisions

§ 380.1 Definitions.

For purposes of this part, the following terms are defined as follows:

Affiliate. The term “affiliate” means any company that controls, is controlled by, or is under common control with another company at the time of, or immediately prior to, the appointment of receiver of the covered financial company.

Allowed claim. The term “allowed claim” means a claim against the covered financial company or receiver that is allowed by the Corporation as receiver or upon which a final non-appealable judgment has been entered in favor of a claimant against a receivership by a court with jurisdiction to adjudicate the claim.

Board of Governors. The term “Board of Governors” means the Board of Governors of the Federal Reserve System.

Bridge financial company. The term “bridge financial company” means a new financial company organized by the Corporation in accordance with 12 U.S.C. 5390(h) for the purpose of resolving a covered financial company.

Business day. The term “business day” means any day other than any Saturday, Sunday or any day on which either the New York Stock Exchange or the Federal Reserve Bank of New York is closed.

Claim. The term “claim” means any right to payment from either the covered financial company or the Corporation as receiver, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.

Compensation. The term “compensation” means any direct or indirect financial remuneration received from the covered financial company, including, but not limited to, salary; bonuses; incentives; benefits; severance pay; deferred compensation; golden parachute benefits; benefits derived from an employment contract, or other compensation or benefit arrangement; perquisites; stock option plans; post-employment benefits; profits realized from a sale of securities in the covered financial company; or any cash or non-cash payments or benefits granted to or for the benefit of the senior executive or director.

Control. The term “control”, when used in the definitions of “affiliate” and “subsidiary”, has the meaning given to such term under 12 U.S.C. 1841(a)(2)(A) and (B) as such law, or any successor, may be in effect at the date of the appointment of the receiver, together with any regulations promulgated thereunder then in effect.

Corporation. The term “Corporation” means the Federal Deposit Insurance Corporation.

Covered financial company. The term “covered financial company” means (a) a financial company for which a determination has been made under 12 U.S.C. 5383(b) and (b) does not include an insured depository institution.

Covered subsidiary. The term “covered subsidiary” means a subsidiary of a covered financial company other than:

- (1) An insured depository institution;
- (2) An insurance company; or
- (3) A covered broker or dealer.

Creditor. The term “creditor” means a person asserting a claim.

Director. The term “director” means a member of the board of directors of a company or of a board or committee performing a similar function to a board of directors with authority to vote on matters before the board or committee.

Dodd-Frank Act. The term “Dodd-Frank Act” shall mean the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, 12 U.S.C. 5301 *et seq.* (2010).

Employee benefit plan. The term “employee benefit plan” has the meaning set forth in the Employee Retirement Income Security Act, 29 U.S.C. 1002(3).

Insurance company. The term “insurance company” means any entity that is:

- (1) Engaged in the business of insurance,
- (2) Subject to regulation by a State insurance regulator, and
- (3) Covered by a State law that is designed to specifically deal with the rehabilitation, liquidation or insolvency of an insurance company.

Intermediate insurance stock holding company. The term “intermediate insurance stock holding company” means a corporation organized either at the time of, or at any time after, the organization of the mutual insurance holding company that:

- (1) Is a subsidiary of a mutual insurance holding company;
- (2) Holds a majority of the issued and outstanding voting stock of the converted mutual insurance company created at the time of formation of the mutual insurance holding company; and
- (3) Holds, as its largest United States subsidiary (as measured by total assets as of the end of the previous calendar quarter), an insurance company.

Mutual insurance company. The term “mutual insurance company” means an insurance company organized under the laws of a State that provides for the formation of such an entity as a non-stock mutual corporation in which the surplus and voting rights are vested in the policyholders.

Mutual insurance holding company. The term “mutual insurance holding company” means a corporation that:

- (1) Is lawfully organized under state law authorizing its formation in connection with the reorganization of a mutual insurance company that converts the mutual insurance company to a stock insurance company, and—
- (2) Holds either:
 - (i) A majority of the issued and outstanding voting stock of the intermediate insurance stock holding company, if any, or
 - (ii) If there is no intermediate insurance stock holding company, a majority of the issued and outstanding voting stock of the converted mutual insurance company.

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Senior executive. The term “senior executive” means any person who participates or has authority to participate (other than in the capacity of a director) in major policymaking functions of the company, whether or not: The person has an official title; the title designates the officer an assistant; or the person is serving without salary or other compensation. The chairman of the board, the president, every vice president, the secretary, and the treasurer or chief financial officer, general partner and manager of a company are considered senior executives, unless the person is excluded, by resolution of the board of directors, the bylaws, the operating agreement or the partnership agreement of the company, from participation (other than in the capacity of a director) in major policymaking functions of the company, and the person does not actually participate therein.

Subsidiary. The term “subsidiary” means any company which is controlled by another company at the time of, or immediately prior to, the appointment of receiver of the covered financial company.

[76 FR 41639, July 15, 2011, as amended at 77 FR 25353, Apr. 30, 2012; 77 FR 63214, Oct. 16, 2012]

§ 380.2 [Reserved]

§ 380.3 Treatment of personal service agreements.

(a) For the purposes of this section, the term “personal service agreement” means a written agreement between an employee and a covered financial company or a bridge financial company setting forth the terms of employment. This term also includes an agreement between any group or class of employees and a covered financial company, or a bridge financial company, including, without limitation, a collective bargaining agreement.

(b)(1) If before repudiation or disaffirmance of a personal service agreement, the Corporation as receiver of a covered financial company, or a bridge financial company accepts performance of services rendered under such agreement, then:

(i) The terms and conditions of such agreement shall apply to the performance of such services; and

(ii) Any payments for the services accepted by the Corporation as receiver shall be treated as an administrative expense of the receiver.

(2) If a bridge financial company accepts performance of services rendered under such agreement, then the terms and conditions of such agreement shall apply to the performance of such services.

(c) No party acquiring a covered financial company or any operational unit, subsidiary or assets thereof from the Corporation as receiver or from any bridge financial company shall be bound by a personal service agreement unless the acquiring party expressly assumes the personal service agreement.

(d) The acceptance by the Corporation as receiver for a covered financial company, or by any bridge financial company or the Corporation as receiver for a bridge financial company of services subject to a personal service agreement shall not limit or impair the authority of the receiver to disaffirm or repudiate any personal service agreement in the manner provided for the disaffirmance or repudiation of any agreement under 12 U.S.C. 5390(c).

(e) Paragraph (b) of this section shall not apply to any personal service agreement with any senior executive or director of the covered financial company or covered subsidiary, nor shall it in any way limit or impair the ability of the receiver to recover compensation from any senior executive or director of a covered financial company under 12 U.S.C. 5390 and the regulations promulgated thereunder.

[76 FR 41640, July 15, 2011]

§ 380.4 [Reserved]

§ 380.5 Treatment of covered financial companies that are subsidiaries of insurance companies.

The Corporation as receiver shall distribute the value realized from the liquidation, transfer, sale or other disposition of the direct or indirect subsidiaries of an insurance company, that are not themselves insurance companies, solely in accordance with the